

M11-1164

SLR:LM:BDM
F.#2011V01645

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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In re the Seizure of:

AFFIDAVIT IN SUPPORT
OF SEIZURE WARRANT

ANY AND ALL FUNDS ON DEPOSIT IN TD
BANK N.A. ACCOUNT NUMBER 7918226510,
LOCATED IN BROOKLYN, NEW YORK, HELD
IN THE NAME TJM DISCOUNT AUTO
WAREHOUSE, INC., UP TO AND INCLUDING
THE SUM OF ONE MILLION SEVENTEEN
THOUSAND NINE HUNDRED THIRTY-TWO
DOLLARS AND EIGHTY CENTS
(\$1,017,932.80), AND ALL PROCEEDS
TRACEABLE THERETO.

Case No.

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EASTERN DISTRICT OF NEW YORK, SS:

PATRICIA URBAN, being duly sworn, deposes and states as
follows:

1. I am a Special Agent with the Department of
Treasury, Internal Revenue Service, Criminal Investigation
Division ("IRS CID"), New York City.

2. I began my law enforcement career as a Special
Agent with the IRS CID in August 2003. Since that time, I have
participated in the investigation of violations of the Bank
Secrecy Act (codified in Title 31, United States Code), the Money
Laundering Control Act (codified in Title 18, United States
Code), and related offenses.

3. This affidavit is made in support of an
application for a seizure warrant for any and all funds on

deposit in TD Bank, N.A. account number 7918226510, located in Brooklyn, New York, held in the name of TJM Discount Auto Warehouse, Inc. (the "Subject Account"), up to and including the sum of \$1,017,932.80 and all proceeds traceable thereto.

4. The facts and information in this affidavit are based upon my personal knowledge, my personal observations, and information and records received from TD Bank, N.A.

5. Because this affidavit is submitted solely for the purpose of obtaining a warrant to seize certain funds in the Subject Account, it is not intended to include each and every fact and matter observed by me or known to the government.

STATUTORY AND REGULATORY FRAMEWORK

6. Pursuant to 31 U.S.C. § 5313(a) and its related regulations, when a domestic financial institution, including banks and money service businesses, is involved in a transaction for the payment, receipt, or transfer of U.S. currency in an amount greater than \$10,000.00, the institution shall file a currency transaction report ("CTR") for each cash transaction, such as, by way of example, a deposit, withdrawal, exchange of currency or other payment or transfer by, through or to a financial institution. CTRs are filed with the Financial Crimes Enforcement Network at the Detroit Data Center on forms that require disclosure of, among other information, the identity of the individual who conducted the transaction and the individual

or organization for whom the transaction was completed. These regulations also require that multiple transactions be treated as a single transaction if the financial institution has knowledge that they are conducted by, or on behalf of, the same person, and they result in currency either received or disbursed by the financial institution totaling more than \$10,000.00 during any single business day.

7. Based on my training and experience, many individuals involved in illegal activities, such as narcotics trafficking, tax evasion and money laundering, are aware of the reporting requirements and take active steps to cause financial institutions to fail to file CTRs in order to avoid detection of the movement of large amounts of cash. These active steps are often referred to as "structuring" and involve making multiple cash deposits or withdrawals in amounts less than \$10,000.00 on the same day or consecutive days in order to avoid the filing of CTRs. Structuring is prohibited by 31 U.S.C. § 5324(a)(3).

8. Pursuant to 31 U.S.C. § 5324, it is a crime for an individual to (a) "cause or attempt to cause a domestic financial institution to fail to file a report required under § 5313(a)," (b) "cause or attempt to cause a domestic financial institution to file a report required under § 5313(a) that contains a material omission or misstatement of fact," or (c) "structure or assist in structuring, any transaction with one or more domestic

financial institutions" for the purpose of evading the reporting requirements of 31 U.S.C. § 5313(a).

9. Further, 31 U.S.C. § 5317 provides for the seizure and forfeiture of any property involved in a violation of 31 U.S.C. § 5324, or any conspiracy to commit any such violation, and any property traceable to any such violation or conspiracy.

10. In any forfeiture action in which the subject property is cash deposited into a bank account, the government is not required to identify the particular funds involved in the offense, as any funds found in the same account within one year of the date of the offense are subject to forfeiture pursuant to 18 U.S.C. § 984.

INVESTIGATORY BACKGROUND

11. TJM Discount Auto Warehouse, Inc. is a wholesale automotive parts distributor located at 501 North Conduit Blvd., Brooklyn, New York 11208. According to a search of public records and bank records, Timothy McNicholas is the president and Mahendra Nagessar is the vice president of the corporation. Timothy McNicholas and Mahendra Nagessar are the only signatories on the Subject Account.

12. Agents conducted surveillance at TJM Discount Auto Warehouse, Inc. on or about October 7, 2011, and observed what appeared to be active business operations, with the name of the business clearly displayed on the outside of the building

and employees unloading pallets of merchandise from a trailer with a forklift.

13. On or about May 14, 2007, a representative of TD Bank, NA contacted one of the principals of TJM Discount Auto Warehouse, Inc., Mahendra Nagessar, regarding deposit activity in the TD Account. At that time, the CTR process was thoroughly explained to Nagessar by the representative of TD Bank and Nagessar indicated that he was aware of the CTR filing process.

14. Based on the government's investigation, as detailed below, the Subject Account has been involved in structuring activity aggregating to approximately \$1,017,932.80 during the period from January 21, 2011 through September 20, 2011.

STRUCTURING ACTIVITY

15. The Subject Account is a business checking account of TJM Discount Auto Warehouse, Inc. and was opened on or about July 29, 2005. According to records for the Subject Account, during the period from January 21, 2011 through September 20, 2011, approximately one hundred thirty three (133) structured currency deposits totaling approximately \$1,017,932.80 were made to the Subject Account. A summary of these transactions which are detailed on the **SCHEDULE A**, attached hereto, demonstrates that all of the deposits were in amounts of less than \$10,000.01, the amount that would have triggered the filing of a CTR, and many of the deposits were made on the same day or on consecutive business days. While

none of the deposits during this period of time were in an amount in excess of \$10,000.00, there were a number of instances where deposits were made on the same business day at different branches of TD Bank and their total exceeded \$10,000.00. Those deposits which were made on the same business day and triggered the filing of "multiple transaction" CTRs by TD Bank are highlighted below in **bold**.¹

16. A representative example of structuring activity in the Subject Account during the period from January 24, 2011 through February 15, 2011 is set forth in the chart below. The chart sets forth the date, day, amount and branch location of nineteen (19) structured deposits totaling \$165,900.00.

| Date of Deposit | Day of Week | Amount Deposited | Branch Location |
|-----------------|-------------|------------------|---------------------|
| 1/24/2011 | Monday | \$7,400.00 | Old Brookville |
| 1/24/2011 | Monday | \$8,500.00 | Auburndale |
| 1/26/2011 | Wednesday | \$9,500.00 | Auburndale |
| 1/27/2011 | Thursday | \$9,100.00 | Auburndale |
| 1/28/2011 | Friday | \$8,300.00 | Auburndale |
| 1/31/2011 | Monday | \$7,300.00 | Huntington Station |
| 1/31/2011 | Monday | \$8,400.00 | Queens Village |
| 1/31/2011 | Monday | \$9,400.00 | East Meadow |
| 2/01/2011 | Tuesday | \$8,200.00 | Staten Island/Hylan |
| 2/3/2011 | Thursday | \$9,600.00 | Auburndale |
| 2/4/2011 | Friday | \$9,250.00 | Auburndale |
| 2/7/2011 | Monday | \$7,300.00 | Forest Hills |
| 2/8/2011 | Tuesday | \$8,900.00 | Staten Island/Hylan |

¹ A "multiple transaction" CTR is typically filed by a financial institution without the customer's knowledge when the customer conducts more than one cash deposit or withdrawal transaction on the same banking day and the aggregate of such deposits or withdrawals exceeds the amount of \$10,000.00.

| Date of Deposit | Day of Week | Amount Deposited | Branch Location |
|-----------------|-------------|------------------|---------------------|
| 2/9/2011 | Wednesday | \$9,000.00 | Auburndale |
| 2/10/2011 | Thursday | \$9,800.00 | Auburndale |
| 2/11/2011 | Friday | \$9,500.00 | Auburndale |
| | | | |
| 2/14/2011 | Monday | \$8,450.00 | West Babylon |
| 2/14/2011 | Monday | \$8,900.00 | Old Brookville |
| 2/15/2011 | Tuesday | \$9,100.00 | Staten Island/Hylan |
| | | | |
| Total | | \$139,290.00 | |

17. Similarly, during the period from March 14, 2011 through April 1, 2011, fourteen (14) cash deposits were made into the Subject Account totaling \$123,584.00. The chart below sets forth the date, day, amount and branch location of each of the structured cash deposits during this period.

| Date of Deposit | Day of Week | Amount Deposited | Branch Location |
|-----------------|-------------|------------------|---------------------|
| 3/14/2011 | Monday | \$9,200.00 | Huntington Station |
| 3/15/2011 | Tuesday | \$8,920.00 | Auburndale |
| 3/16/2011 | Wednesday | \$8,600.00 | Auburndale |
| | | | |
| 3/18/2011 | Friday | \$9,500.00 | Auburndale |
| | | | |
| 3/21/2011 | Monday | \$7,150.00 | West Babylon |
| 3/22/2011 | Tuesday | \$9,750.00 | Auburndale |
| 3/23/2011 | Wednesday | \$7,600.00 | Auburndale |
| 3/24/2011 | Thursday | \$8,314.00 | Auburndale |
| 3/25/2011 | Friday | \$9,300.00 | Auburndale |
| | | | |
| 3/28/2011 | Monday | \$9,900.00 | Old Brookville |
| 3/29/2011 | Tuesday | \$7,800.00 | Staten Island/Hylan |
| 3/30/2011 | Wednesday | \$9,400.00 | Auburndale |
| 3/31/2011 | Thursday | \$9,550.00 | Staten Island/Hylan |
| 4/1/2011 | Friday | \$8,600.00 | Auburndale |
| | | | |
| Total | | \$123,584.00 | |

18. Additionally, during the period from August 23, 2011 through September 19, 2011, fourteen (14) cash deposits were made into the Subject Account totaling \$102,568.00. The chart below sets forth the date, day, amount and branch location of each of the structured cash deposits during this period.

| Date of Deposit | Day of Week | Amount Deposited | Branch Location |
|-----------------|-------------|------------------|--------------------|
| 8/23/2011 | Tuesday | \$8,850.00 | Forest Hills |
| 8/24/2011 | Wednesday | \$9,800.00 | Forest Hills |
| 8/25/2011 | Thursday | \$9,800.00 | Auburndale |
| 8/26/2011 | Friday | \$4,660.00 | Forest Hills |
| | | | |
| 8/31/2011 | Monday | \$9,800.00 | Auburndale |
| 9/1/2011 | Tuesday | \$9,142.00 | Forest Hills |
| 9/2/2011 | Wednesday | \$8,650.00 | Auburndale |
| | | | |
| 9/7/2011 | Wednesday | \$8,690.00 | Auburndale |
| 9/7/2011 | Wednesday | \$2,000.00 | Farmingdale |
| | | | |
| 9/12/2011 | Monday | \$6,586.00 | West Babylon |
| 9/12/2011 | Monday | \$3,400.00 | Huntington Station |
| | | | |
| 9/14/2011 | Wednesday | \$8,350.00 | Auburndale |
| | | | |
| 9/19/2011 | Monday | \$6,740.00 | Forest Hills |
| 9/19/2011 | Monday | \$6,100.00 | Auburndale |
| | | | |
| Total: | | \$102,568.00 | |

19. Based on my training and experience, the pattern of consecutive day and same day cash deposits utilizing multiple branches as reflected above, and which are just below the threshold requiring the filing of a CTR, is consistent with structuring activity.

CONCLUSION


20. Based upon the foregoing investigation, the Subject Account was involved in structuring activity in the amount of approximately \$1,017,932.80 during the period from January 21, 2011 through September 20, 2011 in violation of 31 U.S.C. § 5324.

21. As a result, there is probable cause to believe that all funds on deposit in the Subject Account, up to and

including the sum of \$1,017,932.80 and all funds traceable thereto, are subject to forfeiture pursuant to 31 U.S.C. § 5317(c) and 18 U.S.C. § 984.

22. A restraining order, pursuant to 21 U.S.C. § 853(e), will not be sufficient to preserve the assets in question given the ease with which funds may move out of the Subject Account via wire transfer, electronic funds transfer, or otherwise.

23. Accordingly, pursuant to 21 U.S.C. § 853(f) and 18 U.S.C. § 981(b), I respectfully request that the Court issue a warrant authorizing the seizure of any and all funds on deposit in the Subject Account, up to and including the amount of \$1,017,932.80, and all proceeds traceable thereto.



PATRICIA URBAN
Special Agent
Internal Revenue Service

Sworn to before me this
28th day of November, 2011

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SCHEDULE A

| DATE OF DEPOSIT | AMOUNT DEPOSITED | BRANCH LOCATION |
|-------------------------------|------------------|---------------------------|
| Tuesday, September 20, 2011 | \$3,140.00 | Forest Hills/Metropolitan |
| Monday, September 19, 2011 | \$6,740.00 | Forest Hills/Metropolitan |
| Monday, September 19, 2011 | \$6,100.00 | Auburndale |
| Wednesday, September 14, 2011 | \$8,350.00 | Auburndale |
| Monday, September 12, 2011 | \$6,586.00 | West Babylon |
| Monday, September 12, 2011 | \$3,400.00 | Huntington Station |
| Wednesday, September 07, 2011 | \$8,690.00 | Auburndale |
| Wednesday, September 07, 2011 | \$2,000.00 | Farmingdale |
| Friday, September 02, 2011 | \$8,650.00 | Auburndale |
| Thursday, September 01, 2011 | \$9,142.00 | Forest Hills/Metropolitan |
| Wednesday, August 31, 2011 | \$9,800.00 | Auburndale |
| Friday, August 26, 2011 | \$4,660.00 | Forest Hills/Metropolitan |
| Thursday, August 25, 2011 | \$9,800.00 | Auburndale |
| Wednesday, August 24, 2011 | \$9,800.00 | Forest Hills/Metropolitan |
| Tuesday, August 23, 2011 | \$8,850.00 | Forest Hills/Metropolitan |
| Monday, August 22, 2011 | \$5,400.00 | Auburndale |
| Friday, August 19, 2011 | \$2,735.00 | Auburndale |
| Thursday, August 18, 2011 | \$9,850.00 | Auburndale |
| Wednesday, August 17, 2011 | \$2,280.00 | Auburndale |
| Monday, August 15, 2011 | \$9,000.00 | Farmingdale |
| Friday, August 12, 2011 | \$9,300.00 | Auburndale |
| Thursday, August 11, 2011 | \$9,900.00 | Auburndale |
| Wednesday, August 10, 2011 | \$9,100.00 | Auburndale |
| Tuesday, August 09, 2011 | \$6,807.60 | Staten Island/Richmond |
| Tuesday, August 09, 2011 | \$2,800.00 | Auburndale |
| Friday, August 05, 2011 | \$4,780.00 | Auburndale |
| Thursday, August 04, 2011 | \$8,850.00 | Auburndale |
| Wednesday, August 03, 2011 | \$8,200.00 | Auburndale |
| Friday, July 29, 2011 | \$5,850.00 | Auburndale |
| Thursday, July 28, 2011 | \$8,200.00 | Port Chester |
| Wednesday, July 27, 2011 | \$5,200.00 | Auburndale |
| Tuesday, July 26, 2011 | \$4,870.00 | Auburndale |
| Monday, July 25, 2011 | \$5,920.00 | Auburndale |
| Monday, July 25, 2011 | \$2,791.20 | Staten Island/Forest |
| Friday, July 22, 2011 | \$7,210.00 | Auburndale |
| Thursday, July 21, 2011 | \$6,850.00 | Auburndale |

SCHEDULE A

| | | |
|--------------------------|------------|---------------------------|
| Wednesday, July 20, 2011 | \$9,700.00 | Auburndale |
| Friday, July 15, 2011 | \$5,000.00 | Port Chester |
| Thursday, July 14, 2011 | \$8,900.00 | Auburndale |
| Wednesday, July 13, 2011 | \$9,200.00 | Auburndale |
| Tuesday, July 12, 2011 | \$5,697.00 | Auburndale |
| Monday, July 11, 2011 | \$5,260.00 | Forest Hills/Metropolitan |
| Friday, July 08, 2011 | \$4,700.00 | Auburndale |
| Thursday, July 07, 2011 | \$9,400.00 | Auburndale |
| Wednesday, July 06, 2011 | \$7,690.00 | Staten Island/Richmond |
| Friday, July 01, 2011 | \$9,268.00 | Forest Hills/Metropolitan |
| Thursday, June 30, 2011 | \$9,450.00 | Auburndale |
| Wednesday, June 29, 2011 | \$8,850.00 | Auburndale |
| Tuesday, June 28, 2011 | \$6,270.00 | Forest Hills/Metropolitan |
| Friday, June 24, 2011 | \$9,550.00 | Auburndale |
| Thursday, June 23, 2011 | \$8,900.00 | Auburndale |
| Thursday, June 09, 2011 | \$9,300.00 | Auburndale |
| Monday, June 06, 2011 | \$6,000.00 | Auburndale |
| Friday, June 03, 2011 | \$9,750.00 | Auburndale |
| Thursday, June 02, 2011 | \$9,500.00 | Auburndale |
| Wednesday, June 01, 2011 | \$9,830.00 | Auburndale |
| Friday, May 27, 2011 | \$9,050.00 | Forest Hills/Metropolitan |
| Friday, May 27, 2011 | \$4,100.00 | Huntington Station |
| Thursday, May 26, 2011 | \$8,300.00 | Old Brookville |
| Wednesday, May 25, 2011 | \$9,400.00 | Auburndale |
| Tuesday, May 24, 2011 | \$4,376.00 | Weehawken |
| Friday, May 20, 2011 | \$3,900.00 | Old Brookville |
| Thursday, May 19, 2011 | \$8,695.00 | Bayside |
| Wednesday, May 18, 2011 | \$6,500.00 | Auburndale |
| Tuesday, May 17, 2011 | \$7,510.00 | Forest Hills/Metropolitan |
| Monday, May 16, 2011 | \$9,545.00 | Forest Hills/Metropolitan |
| Monday, May 16, 2011 | \$8,700.00 | Huntington Station |
| Friday, May 13, 2011 | \$8,250.00 | Auburndale |
| Tuesday, May 10, 2011 | \$4,800.00 | Huntington Station |
| Monday, May 09, 2011 | \$7,850.00 | Massapequa East |
| Friday, May 06, 2011 | \$8,800.00 | Auburndale |

SCHEDULE A

| | | |
|---------------------------|------------|---------------------------|
| Thursday, May 05, 2011 | \$9,400.00 | Auburndale |
| Wednesday, May 04, 2011 | \$8,900.00 | Auburndale |
| Tuesday, May 03, 2011 | \$4,420.00 | Forest Hills/Metropolitan |
| Friday, April 29, 2011 | \$9,400.00 | Auburndale |
| Thursday, April 28, 2011 | \$9,800.00 | Auburndale |
| Friday, April 22, 2011 | \$7,650.00 | Auburndale |
| Thursday, April 21, 2011 | \$4,900.00 | Auburndale |
| Thursday, April 21, 2011 | \$2,000.00 | Staten Island/Hylan |
| Wednesday, April 20, 2011 | \$8,200.00 | Auburndale |
| Tuesday, April 19, 2011 | \$6,270.00 | Auburndale |
| Monday, April 18, 2011 | \$4,017.00 | Auburndale |
| Friday, April 15, 2011 | \$8,750.00 | Huntington Station |
| Thursday, April 14, 2011 | \$9,000.00 | Auburndale |
| Wednesday, April 13, 2011 | \$9,490.00 | Auburndale |
| Tuesday, April 12, 2011 | \$2,700.00 | Auburndale |
| Monday, April 11, 2011 | \$9,250.00 | West Babylon |
| Thursday, April 07, 2011 | \$8,690.00 | Auburndale |
| Tuesday, April 05, 2011 | \$7,750.00 | Auburndale |
| Monday, April 04, 2011 | \$4,687.00 | Staten Island/Hylan |
| Friday, April 01, 2011 | \$8,600.00 | Auburndale |
| Thursday, March 31, 2011 | \$9,550.00 | Staten Island/Hylan |
| Wednesday, March 30, 2011 | \$9,400.00 | Auburndale |
| Tuesday, March 29, 2011 | \$7,800.00 | Staten Island/Hylan |
| Monday, March 28, 2011 | \$9,900.00 | Old Brookville |
| Friday, March 25, 2011 | \$9,300.00 | Auburndale |
| Thursday, March 24, 2011 | \$8,314.00 | Auburndale |
| Wednesday, March 23, 2011 | \$7,600.00 | Auburndale |
| Tuesday, March 22, 2011 | \$9,750.00 | Auburndale |
| Monday, March 21, 2011 | \$7,150.00 | West Babylon |
| Friday, March 18, 2011 | \$9,500.00 | Auburndale |
| Wednesday, March 16, 2011 | \$8,600.00 | Auburndale |
| Tuesday, March 15, 2011 | \$8,920.00 | Auburndale |
| Monday, March 14, 2011 | \$9,200.00 | Huntington Station |
| Friday, March 11, 2011 | \$9,500.00 | Bayside |
| Thursday, March 10, 2011 | \$8,460.00 | Old Brookville |
| Wednesday, March 09, 2011 | \$9,600.00 | Auburndale |
| Tuesday, March 08, 2011 | \$5,000.00 | Staten Island/Hylan |

SCHEDULE A

| | | |
|------------------------------|-----------------------|---------------------------|
| Tuesday, March 08, 2011 | \$3,600.00 | Auburndale |
| Monday, March 07, 2011 | \$9,250.00 | Auburndale |
| Thursday, March 03, 2011 | \$7,000.00 | Auburndale |
| Wednesday, March 02, 2011 | \$9,701.00 | Auburndale |
| Wednesday, February 16, 2011 | \$7,871.00 | Auburndale |
| Tuesday, February 15, 2011 | \$9,100.00 | Staten Island/Hylan |
| Monday, February 14, 2011 | \$8,900.00 | Old Brookville |
| Monday, February 14, 2011 | \$8,450.00 | West Babylon |
| Friday, February 11, 2011 | \$9,500.00 | Auburndale |
| Thursday, February 10, 2011 | \$9,800.00 | Auburndale |
| Wednesday, February 09, 2011 | \$9,000.00 | Auburndale |
| Tuesday, February 08, 2011 | \$8,900.00 | Staten Island/Hylan |
| Monday, February 07, 2011 | \$7,300.00 | Forest Hills/Metropolitan |
| Friday, February 04, 2011 | \$9,250.00 | Auburndale |
| Thursday, February 03, 2011 | \$9,600.00 | Auburndale |
| Tuesday, February 01, 2011 | \$8,200.00 | Staten Island/Hylan |
| Monday, January 31, 2011 | \$9,400.00 | East Meadow |
| Monday, January 31, 2011 | \$8,400.00 | Queens Village |
| Monday, January 31, 2011 | \$7,300.00 | Huntington Station |
| Friday, January 28, 2011 | \$8,300.00 | Auburndale |
| Thursday, January 27, 2011 | \$9,100.00 | Auburndale |
| Wednesday, January 26, 2011 | \$9,500.00 | Auburndale |
| Monday, January 24, 2011 | \$8,500.00 | Auburndale |
| Monday, January 24, 2011 | \$7,400.00 | Old Brookville |
| Friday, January 21, 2011 | \$9,600.00 | Auburndale |
| TOTAL | \$1,017,932.80 | |